

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

LEAVIE SCOTT,

Defendant.

ORDER

07-cv-0533-bbc
05-cr-0116-bbc

Defendant Leavie Scott has written to the court, asking to proceed once again with his September 24, 2007 motion filed pursuant to 28 U.S.C. § 2255, dkt 34, challenging his October 28, 2005 conviction. In his motion, defendant alleged two claims: 1) he was sentenced unconstitutionally because he was deprived of an opportunity for a meaningful allocution; and 2) his counsel was ineffective because he did not argue the unconstitutionality of the drug laws. In the October 22, 2007 order denying his motion, I concluded that because defendant raised the issue of his allocution claim on direct appeal, he was barred from raising it in his § 2255 motion. On appeal the court of appeals had held that the fact that defendant did not have an opportunity to speak on his own behalf at the time of sentencing was not plain error. As to defendant's second claim, I found that it was not ineffectiveness for defendant's counsel to refuse to advance a clearly frivolous claim about the unconstitutionality of the drug laws. I denied his § 2255 motion and entered

judgment on October 22, 2007.

On April 18, 2008, this case was remanded to the district court for resentencing in light of Kimbrough v. United States, 128 S. Ct. 558 (2007). On June 13, 2008, defendant was resentenced to a term of imprisonment of 120 months. Defendant appealed that conviction and the court of appeals affirmed the conviction on February 11, 2009.

Defendant now asks for permission to renew his September 24, 2007 § 2255 motion. The request must be denied. Defendant cannot re-argue this first § 2255 motion or bring another § 2255 motion challenging his October 28, 2005 conviction without first obtaining permission from the Court of Appeals of the Seventh Circuit.

ORDER

IT IS ORDERED that defendant's motion to proceed with his § 2255 motion is DENIED.

Entered this 20th day of March, 2009.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge